

## **Appendix Two: Instructions Covered in Other Sets**

As noted previously, the Committee chose the topics for its substantive instructions (concerning Section 1983 claims and employment-related claims) because those topics frequently arise in cases litigated within the Third Circuit. The index that follows lists model instructions from other sources that cover other topics. At the end of this Appendix is a statistical summary showing the frequency with which various types of claims result in completed jury trials in district courts within the Third Circuit.

## **Instructions for Use in Other Federal Circuits**

- 5th Circuit (2004) (available online at <http://www.lb5.uscourts.gov/juryinstructions/2004CIVIL.pdf>, and on Westlaw in the FED-JICIV database)
  - 7th Circuit (2005) (available online at <http://www.ca7.uscourts.gov/7thcivinstruc2005.pdf>, and on Westlaw in the FED-JICIV database)
  - 8th Circuit (2005) (available online at <http://www.juryinstructions.ca8.uscourts.gov/civilman05.pdf>, and on Westlaw in the FED-JICIV database)
  - 9th Circuit (2005) (available online at <http://www.ce9.uscourts.gov/web/sdocuments.nsf/civ>, and on Westlaw in the FED-JICIV database)
  - 11th Circuit (2005) (available online at <http://www.ca11.uscourts.gov/documents/pdfs/civjury.pdf>, and on Westlaw in the FED-JICIV database)

## **Instructions from States within the Third Circuit**

- Delaware (available on Westlaw in the DE-JICIV database)
  - New Jersey (available online at <http://www.judiciary.state.nj.us/civil/civindx.htm>, and on Westlaw in the NJ-JICIV database)
  - Pennsylvania (available on Westlaw in the PA-JICIV database)

### **Instructions from Other Sources**

- American Bar Association (ABA):
    - Model Jury Instructions in Civil Antitrust Cases (2005)
    - Model Jury Instructions: Patent Litigation (2005)
    - Model Jury Instructions: Securities Litigation (1996)
  - American Intellectual Property Law Association, Model Patent Jury Instructions (2005, updated 2006) (available online at <http://www.aipla.org/Template.cfm?template=/ContentManagement/ContentDisplay.cfm&ContentID=10448>)
  - Michael Avery, David Rudovsky & Karen M. Blum, Police Misconduct: Law and Litigation (3d ed. 2004) (available on Westlaw in the POLICEMISC database)
  - Federal Circuit Bar Association, Model Patent Jury Instructions (available online at [www.fedcirbar.org](http://www.fedcirbar.org))
  - Kevin F. O'Malley, Jay E. Grenig, & William C. Lee, Federal Jury Practice and Instructions – Civil (2000-01 & Supp. 2006) (available on Westlaw in the FED-JICIV database)
  - Leonard Sand, John S. Siffert, Walter P. Loughlin, Steven A. Reiss & Nancy Batterman, Modern Federal Jury Instructions – Civil (looseleaf, updated through 2006) (available on Lexis in the Matthew Bender library)
  - Martin A. Schwartz & George C. Pratt, 4 Section 1983 Litigation: Jury Instructions (looseleaf, updated through 2006)

## **Instructions That Pertain to Federal Claims and Are Not Covered in Third Circuit Models**

- Admiralty
    - 5<sup>th</sup> Cir. – 4.1 - 4.13
    - 8<sup>th</sup> Cir. – 8.10 - 8.90
    - 9<sup>th</sup> Cir. – 9.1 - 9.12
    - 11<sup>th</sup> Cir. – Federal Claims 6.1 & 6.2
    - O’Malley, Grenig & Lee – Chapter 156
    - Sand – Chapter 90

- 1     ●     Antitrust
- 2
- 3         ○     5<sup>th</sup> Cir. – 6.1 & 6.2
- 4         ○     11<sup>th</sup> Cir. – Federal Claims 3.1 & 3.2
- 5         ○     ABA, Model Jury Instructions in Civil Antitrust Cases
- 6         ○     O’Malley, Grenig & Lee – Chapter 150
- 7         ○     Sand – Chapters 79 - 81
- 8
- 9     ●     Bankruptcy
- 10
- 11         ○     O’Malley, Grenig & Lee – Chapter 164
- 12
- 13     ●     Civil Rights – Education Discrimination
- 14
- 15             -     O’Malley, Grenig & Lee – Chapter 177
- 16
- 17     ●     Civil Rights – First Amendment – Libel
- 18
- 19         ○     Sand – Chapter 91
- 20
- 21     ●     Civil Rights – Housing Discrimination
- 22
- 23         ○     O’Malley, Grenig & Lee – Chapter 169
- 24         ○     Sand – 87-37 - 87-64A
- 25
- 26     ●     Civil Rights – Section 1983 Claims
- 27
- 28         ○     Conditions of Confinement
- 29
- 30             -     5<sup>th</sup> Cir. – 10.7
- 31             -     7<sup>th</sup> Cir. – 7.10
- 32             -     9<sup>th</sup> Cir. – 11.10
- 33             -     O’Malley, Grenig & Lee – 166.22
- 34             -     Schwartz & Pratt – 11.02.1 - 11.02.5
- 35
- 36         ○     Denial of Access to Courts
- 37
- 38             -     7<sup>th</sup> Cir. – 8.01 - 8.03
- 39             -     11th Cir. – Federal Claims 2.1
- 40             -     O’Malley, Grenig & Lee – 166.24
- 41
- 42         ○     Law Enforcement – Other Violations
- 43
- 44             -     Excessive Bail
- 45

- 1                   ■       Schwartz & Pratt – 9.04
- 2
- 3                   -       Failure to Produce Exculpatory Evidence
- 4
- 5                   ■       Avery, Rudovsky & Blum – 12.29 - 12.30
- 6                   ■       Schwartz & Pratt – 9.01
- 7
- 8                   -       Manufactured, Coerced, or False Evidence
- 9
- 10                  ■       Avery, Rudovsky & Blum – 12.25 - 12.28
- 11                  ■       Schwartz & Pratt – 9.02
- 12
- 13                  ○      Plaintiff's Status
- 14
- 15                  -       Schwartz & Pratt – 3.04.1 - 3.04.3
- 16
- 17                  ○      Prisoner – Disciplinary Sanctions
- 18
- 19                  -       Schwartz & Pratt – 11.04.1 - 11.04.3
- 20
- 21                  ○      Prisoner – Retaliation
- 22
- 23                  -       7<sup>th</sup> Cir. – 6.02 & 6.03
- 24                  -       11<sup>th</sup> Cir. – Federal Claims 2.1
- 25
- 26                  ○      Procedural Due Process
- 27
- 28                  -       O'Malley, Grenig & Lee – 168.80 - 168.151
- 29                  -       Schwartz & Pratt – 6.01.1 - 6.01.4
- 30
- 31                  ○      Regulatory Takings
- 32
- 33                  -       Schwartz & Pratt – 6.03.1
- 34
- 35                  ○      Substantive Due Process
- 36
- 37                  -       Schwartz & Pratt – 6.02.1 - 6.02.5
- 38
- 39                  ○      Unreasonable Search
- 40
- 41                  -       9<sup>th</sup> Cir. – 11.5 - 11.8
- 42                  -       Avery, Rudovsky & Blum – 12.15 - 12.19
- 43                  -       O'Malley, Grenig & Lee – 165.22
- 44                  -       Sand – 87-74B
- 45

- 1     ● Civil Rights – Section 1985 Conspiracy Claims
- 2
- 3         ○ O’Malley, Grenig & Lee – Chapter 167
- 4         ○ Sand – 87-100 - 87-111
- 5
- 6     ● Damages
- 7
- 8         ○ 5<sup>th</sup> Cir. – 2.22 (cautionary instruction); 15.1 - 15.15
- 9         ○ 9<sup>th</sup> Cir. – 7.1 - 7.6
- 10         ○ 11<sup>th</sup> Cir. – Supplemental Damages 1.1 - 6.1
- 11         ○ Schwartz & Pratt – Chapter 18
- 12
- 13     ● Defenses
- 14
- 15         ○ Miscellaneous
- 16
- 17             - O’Malley, Grenig & Lee – 107.01 - 107.04
- 18
- 19         ○ Statute of Limitations
- 20
- 21             - 5<sup>th</sup> Cir. – 14.1
- 22
- 23     ● Eminent Domain
- 24
- 25         ○ 5<sup>th</sup> Cir. – 13.3
- 26         ○ 11<sup>th</sup> Cir. – Federal Claims 9.1
- 27         ○ O’Malley, Grenig & Lee – Chapter 154
- 28
- 29     ● Evidence
- 30
- 31         ○ Admissions in Pleadings
- 32
- 33             - O’Malley, Grenig & Lee – 101.46
- 34
- 35         ○ Credibility of Witnesses
- 36
- 37             - O’Malley, Grenig & Lee – 105.01 - 105.12
- 38
- 39         ○ Cross-Examination of Character Witness
- 40
- 41             - 8<sup>th</sup> Cir. – 2.07
- 42
- 43         ○ Demonstrative Evidence
- 44
- 45             - 5<sup>th</sup> Cir. – 2.8

- 1           ○ Fingerprints
- 2            -       O'Malley, Grenig & Lee – 104.51
- 3
- 4           ○ Habit or Routine Practice Evidence
- 5            -       Sand – 74-6
- 6
- 7           ○ Handwriting
- 8            -       O'Malley, Grenig & Lee – 104.52
- 9
- 10          ○ Impeachment by Inconsistent Statements
- 11            -       5<sup>th</sup> Cir. – 2.16
- 12            -       11<sup>th</sup> Cir. – Federal Claims 4.1
- 13            -       O'Malley, Grenig & Lee – 105.04
- 14
- 15          ○ Inferences and Presumptions
- 16            -       O'Malley, Grenig & Lee – 104.20 - 104.27
- 17
- 18          ○ Oral Statements or Admissions
- 19            -       O'Malley, Grenig & Lee – 104.53
- 20
- 21          ○ Pleadings
- 22            -       O'Malley, Grenig & Lee – 103.32
- 23
- 24          ○ Requests for Admission
- 25            -       Sand – 74-15
- 26
- 27          ○ Similar Acts
- 28            -       5<sup>th</sup> Cir. – 2.10
- 29            -       Sand – 74-6 - 74-8.1
- 30
- 31          ○ Statements by Patient to Doctor
- 32            -       Sand – 74-10
- 33
- 34          ○ Stipulations at Pretrial Conference



- 1           ○ Sequestration
- 2
- 3           -       O'Malley, Grenig & Lee – 101.12
- 4
- 5           ○ Sympathy
- 6
- 7           -       Sand – 71-10
- 8
- 9           ○ Tests and Experiments
- 10
- 11          -       9<sup>th</sup> Cir. – 2.12
- 12
- 13          ○ Verdict
- 14
- 15          -       O'Malley, Grenig & Lee – 106.01 - 106.16
- 16
- 17          ○ Withdrawal of Claim
- 18
- 19          -       8<sup>th</sup> Cir. – 2.11 & 3.05
- 20          -       O'Malley, Grenig & Lee – 102.60
- 21
- 22       ● Intellectual Property
- 23
- 24          ○ Copyright
- 25
- 26          -       9<sup>th</sup> Cir. – 20.0 - 20.25
- 27          -       O'Malley, Grenig & Lee – Chapter 160
- 28          -       Sand – Chapter 86B
- 29
- 30          ○ Patent
- 31
- 32          -       5<sup>th</sup> Cir. – 9.1 - 9.11
- 33          -       11<sup>th</sup> Cir. – Federal Claims 8.1
- 34          -       American Intellectual Property Law Association, Model Patent Jury  
35              Instructions
- 36          -       ABA, Model Jury Instructions: Patent Litigation
- 37          -       Federal Circuit Bar Association
- 38          -       O'Malley, Grenig & Lee: Chapter 158
- 39          -       Sand: Chapters 81 & 86
- 40
- 41          ○ Trademark
- 42
- 43          -       9<sup>th</sup> Cir. – 18.0 - 18.25
- 44          -       O'Malley, Grenig & Lee – Chapter 159
- 45          -       Sand – Chapter 86A

- 1  
2     ● Labor & Employment  
3  
4         ○ Employee's Claims Against Employer and Union  
5  
6             -     5<sup>th</sup> Cir. – 11.3  
7             -     9<sup>th</sup> Cir. – 16.1 & 16.2  
8             -     11<sup>th</sup> Cir. – Federal Claims 1.9.1  
9             -     O'Malley, Grenig & Lee – 157.80 - 157-140  
10  
11         ○ Employer's Claim against Union  
12  
13             -     O'Malley, Grenig & Lee – 157.01 - 157.71  
14  
15         ○ Fair Labor Standards Act  
16  
17             -     5<sup>th</sup> Cir. – 11.1  
18             -     11<sup>th</sup> Cir. – Federal Claims 1.7.1  
19             -     O'Malley, Grenig & Lee – Chapter 175  
20  
21     ● Miscellaneous Statutory Actions  
22  
23         ○ Automobile Dealers Day-in-Court Act  
24  
25             -     5<sup>th</sup> Cir. – 13.1  
26             -     11<sup>th</sup> Cir. – Federal Claims 11.1  
27             -     O'Malley, Grenig & Lee – Chapter 151  
28  
29         ○ Emergency Medical Treatment And Active Labor Act  
30  
31             -     O'Malley, Grenig & Lee – Chapter 176  
32  
33         ○ Fair Credit Reporting Act  
34  
35             -     O'Malley, Grenig & Lee – Chapter 153  
36  
37         ○ False Claims Act  
38  
39             -     O'Malley, Grenig & Lee – Chapter 178  
40  
41         ○ Interstate Land Sales Full Disclosure Act  
42  
43             -     5<sup>th</sup> Cir. – 13.4  
44             -     11<sup>th</sup> Cir. – Federal Claims 13.1  
45

- 1           ○ Odometer Fraud  
2  
3            - 5<sup>th</sup> Cir. – 13.2  
4            - 8<sup>th</sup> Cir. – 6.01 & 6.51  
5            - 11<sup>th</sup> Cir. – Federal Claims 12.1  
6  
7           ○ Petroleum Marketing Practices Act  
8  
9            - O’Malley, Grenig & Lee – Chapter 152

10         ● Party Status

- 11  
12         ○ All Persons Equal Before the Law  
13           - O’Malley, Grenig & Lee – 103.11 & 103.12  
14  
15         ○ Corporation as Party  
16  
17           - 5<sup>th</sup> Cir. – 2.13  
18           - 11<sup>th</sup> Cir. – Basic 2.2  
19           - Sand – 72-1  
20           - O’Malley, Grenig & Lee – 103.12  
21  
22         ○ Government as Party  
23  
24           - 11<sup>th</sup> Cir. – Basic 2.3  
25  
26         ○ Multiple Parties  
27  
28           - 5<sup>th</sup> Cir. – 2.5  
29           - 8<sup>th</sup> Cir – 2.08A  
30           - 9<sup>th</sup> Cir. – 3.11  
31           - O’Malley, Grenig & Lee – 102.41, 103.10, 103.13, 103.14

32         ● Railroad Employees

- 33  
34         ○ Federal Employers’ Liability Act  
35  
36           - 5<sup>th</sup> Cir. – 5.1  
37           - 8<sup>th</sup> Cir. – 7.01 - 7.11  
38           - 9<sup>th</sup> Cir. – 8.1 - 8.7  
39           - 11<sup>th</sup> Cir. – Federal Claims 7.1  
40           - O’Malley, Grenig & Lee – 155.01 - 155.74  
41           - Sand – Chapter 89

- 1           ○     Federal Safety Appliance Act  
2  
3           -       5th Cir. – 5.2  
4           -       8th Cir. – 7.05  
5           -       O’Malley, Grenig & Lee – 155.80 - 155.151  
6

7       ●     RICO  
8

- 9           ○     5<sup>th</sup> Cir. – 8.1  
10          ○     11<sup>th</sup> Cir. – Federal Claims 5.1  
11          ○     O’Malley, Grenig & Lee – Chapter 161  
12          ○     Sand – Chapter 84  
13

14       ●     Securities  
15

- 16          ○     5<sup>th</sup> Cir. – 7.1  
17          ○     9<sup>th</sup> Cir. – 21.0 - 21.14  
18          ○     11<sup>th</sup> Cir. – Federal Claims 4.1 - 4.3  
19          ○     ABA, Model Jury Instructions: Securities Litigation  
20          ○     O’Malley, Grenig & Lee – Chapter 162  
21          ○     Sand – Chapters 82 & 83  
22

23       ●     Tax Refunds  
24

- 25          ○     5<sup>th</sup> Cir. – 12.1 - 12.7  
26          ○     9<sup>th</sup> Cir. – 10.1 & 10.2  
27          ○     11<sup>th</sup> Cir. – Federal Claims 10.1 - 10.6  
28          ○     O’Malley, Grenig & Lee – Chapter 163  
29

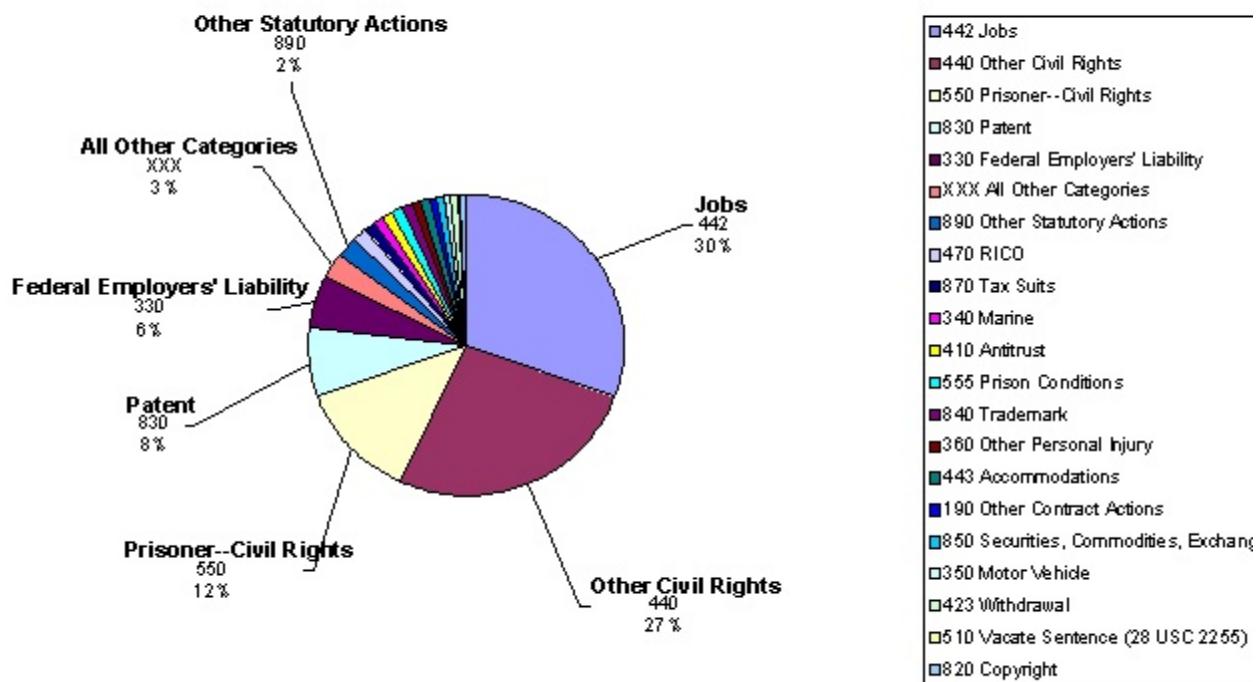
30       ●     Vicarious Liability  
31

- 32          ○     9<sup>th</sup> Cir. – 6.1 - 6.17  
33          ○     11<sup>th</sup> Cir. – Federal Claims 1.10.4.1 - 1.10.5.2  
34          ○     O’Malley, Grenig & Lee – Chapter 108

## Statistical Summary

As a rough method of estimating the relative frequency of different types of claims in jury trials within the Third Circuit, the following data may be useful. These data were obtained by searching the database maintained at <http://teddy.law.cornell.edu:8090/questr7900.htm>; the database contains data “gathered by the Administrative Office of the United States Courts,

Third Circuit Jury Trials, 1996-2000 (top 20 categories -- federal question plus US party)



assembled by the Federal Judicial Center, and disseminated by the Inter-university Consortium for Political and Social Research,” *see id.* The search included “all” case categories, with any of three bases of jurisdiction (“US defendant,” “US plaintiff,” or “federal question”). (The search’s limitation on bases of jurisdiction was intended to eliminate diversity cases, which presumably would typically involve state-law claims.) The search was limited to completed jury trials, within the Third Circuit, that terminated during the years 1996 - 2000. (For a discussion of the year variable, see <http://teddy.law.cornell.edu:8090/year.htm>.) The case categories were defined by reference to the category selected on the Civil Cover Sheet (available online at <http://www.uscourts.gov/forms/JS044.pdf>). See Fifth ICPSR Edition (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 1993), available online at <http://teddy.law.cornell.edu:8090/codebook.htm>.